

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

#5

First named inventor: Dietrich Stephen

Application Number: 09/940,454

TBA

Filed: 08/29/2001



Group Art Unit:1645

Examiner:unknown::

**Title: A Gene-Based Method for Distinguishing Metastatic from Non-Metastatic Forms of
a Tumor and Use in Diagnosing Therapeutic Drugs**

Docket Number (Optional) 64688/153

**Mail Stop: Petition
Commissioner for Patents
Box 1450
Arlington, VA 22313-1450**

**NOTE: If information or assistance is needed in completing this form, please contact
Petitions Information at (703) 305-9282.**

**The above-identified application became abandoned for an alleged failure to file a timely
and proper reply to a notice or action by the United States Patent and Trademark Office.
The date of abandonment is the day after the expiration date of the period set for reply in
the Office notice or action plus any extensions of time actually obtained.**

**APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION. NOTE: A
grantable petition requires the following items:**

- (1) Petition fee for revival of the present application**
- (2) Reply to office action**
- (3) Adequate showing of the cause of unavoidable delay**

1. Petition fee

☒ **small entity-fee \$ 130** (37 CFR 1.17(l) Applicant claims small entity status.

☐ **other than small entity fee \$** .(37 CFR 1.17(1)).

2. Reply and/or fee

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☐ has been filed previously on

☒ is enclosed herewith.

3. The issue fee of \$

☐ has been paid previously on.

☐ is enclosed herewith.

4. Terminal disclaimer with disclaimer fee

As this utility/plant application was filed after June 8, 1995, no terminal disclaimer is required.

5. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1. 137(a) was unavoidable is provided below.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038 (see attached PTO-2038).

Date: 11/10/2003

Signature

Typed or printed name: Dr. Melvin Blecher

Ref. No. 33,649

Address: 4329 Van Ness St., NW, Washington, DC 20016-5625

Telephone: 202 363 3338

Enclosures: X Fee Payments

X Reply to Notice To File Corrected Application Papers

X Informal petition to make special

X Informal request to lengthen the patent term

X Explanation of unavoidable abandonment plus docket exhibit.

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NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply)

Petitioners, by their undersigned attorney, hereby declare the following:

1. A Notice of Abandonment Under 37 CFR 1.53 was mailed to the undersigned on 11/05/2003 (copy enclosed). This Notice alleges that Applicants failed to respond to a Notice To File Missing Parts allegedly sent by facsimile to the undersigned on 10/9/2001. A review of our docketing records indicate that such a document was never received by this office.

2. On 11/07/2003, I telephoned the Customer Care Center of the Initial Patent Examination Division that had mailed me the Notice of Abandonment. I spoke to a Tushombe Stokes who merely reiterated what was in the Notice of Abandonment. Ms Stokes could provide me with neither the facsimile telephone number that allegedly had been used on 10/9/2001 nor with any proof that the Office had sent the facsimile. We must add parenthetically that never in our long practice of patent law has the Office sent me an Office Action by facsimile.

3. Ms Stokes, at my request, sent me a copy of the notice that was allegedly sent to us on 10/9/2001. It was revealing that she had to ask me for our fax address. In any case, despite what the Notice of Abandonment stated, the 10/9/2001 notice was actually entitled Notice to File Corrected Application Papers. Applicants' reply to this Notice is included in the present papers.

4. Ms Stokes' only instruction was that we had to prove that we had not received the 10/9/2001 "Notice of Missing Parts", such as could be found in our docketing records. Applicants' proof that we had not received the 10/9/01 notice consists of an enclosed copy of the docketing record that is maintained on the jacket cover of the present patent application file folder. Such docketing methods are routinely used in our law practice and in all of my practice history. As can be seen, there are only four entries in this docketing record, the date on which the application was filed in the PTO, the date on which a Filing Receipt was received here, the date on which the Notice of Abandonment was sent to our office by mail, and the present date

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on which Ms Stokes facsimilied us the Notice To File Corrected Application Papers. Clearly absent is any record of any paper being sent to us by the Office on or about 10/9/2001.

5. Petitioners submit that they have clearly established that the abandonment was the result of the negligence of certain Office employees, and therefor was unavoidable by Petitioners. On this basis, this petition should be granted, and the petition fee returned to this office.

6. Petitioners also submit that, as the result of this negligence on the part of the Office, two years of prosecution time have been lost by the Petitioners. It would be appropriate, therefore, for the Office to add 104 weeks to the patent term.

7. It would also be appropriate for the Office to make this application Special so as to expedite prosecution. The fact that the subject matter of the present application involves cancer supports this action by the Office (see MPEP 708.02(X)). The undersigned believes that, under the present circumstances, Petitioners should not be charged a fee for this informal petition to make special. However, should the Office of Petition deem otherwise, and require a formal Petition To Make Special plus fee, it is requested that the undersigned be so notified and a separate Petition to Make Special will be filed.

Respectfully submitted,

Date: 11/10/2003

Signature



Dr. Melvin Blecher, Attorney for
Applicants/Petitioners

Ref. NO. 33,649

(Please attach additional sheets if additional space is necessary)

